

OLL 85-1424
17 May 1985

MEMORANDUM FOR: General Counsel

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FROM:

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Chief, Legislative Division
Office of Legislative Liaison

SUBJECT: Defector Citizenship Legislation: Stump
Proposal and Rodino Letter

1. Attached for your information is a copy of the defector citizenship legislation which was offered by Representative Stump at the markup of the Fiscal Year 1986 Intelligence Authorization Bill by the House Permanent Select Committee on Intelligence (HPSCI) but rejected.

2. Also attached is a copy of a letter from Representative Rodino, Chairman of the House Judiciary Committee, to Representative Hamilton, HPSCI Chairman. In the letter, Representative Rodino notes that should the Bill as reported by HPSCI contain a defector citizenship proposal, he will request sequential referral of it to the Judiciary Committee.

3. We understand that although the provision was not included in the HPSCI version of the Bill, the HPSCI has tentatively decided to hold hearings on the subject in the early summer. We are currently preparing a letter from the DCI to Representatives Hamilton and Stump on the subject. The letter will again place the item before the Committee, this time as freestanding legislation, thereby hoping to take advantage of the proposed hearings and make the Agency proposal the focus of those hearings.

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Attachment
as stated

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U.S. House of Representatives Committee on the Judiciary

Washington, DC 20515

Telephone: 202-225-3951

May 3, 1985

Honorable Lee Hamilton
 Chairman
 Permanent Select Committee on Intelligence
 H-405, The Capitol
 Washington, D.C.

Dear Mr. Chairman:

It has been brought to my attention by Congressman Romano Mazzoli that your Committee has under active consideration a legislative proposal granting the President authority to naturalize up to five foreign intelligence sources per year.

It is my understanding that Mr. Mazzoli, who is Chairman of the Subcommittee on Immigration, Refugees, and International Law, has already communicated his views on this provision to you and several other Members of your Committee.

As you may know, existing immigration law already authorizes the admission (as permanent residents) of up to 100 aliens per year if it is determined that such admission "is in the interest of national security or essential to the furtherance of the national intelligence mission."

The proposed legislation would take this one step further and authorize the immediate naturalization of such persons upon their admission for permanent residence. In this regard, it should be noted that the Judiciary Committee has on numerous occasions over the past three decades considered private immigration legislation to waive the physical presence and residency requirements for naturalization for defectors and other cases of CIA interest. In each of these expeditious naturalization cases, the Committee has reviewed each case individually on the merits to determine whether the passage of private legislation was appropriate. I continue to believe that this case-by-case approach is the proper way to proceed.

Therefore, if the aforementioned provision is included in the final version of the Intelligence Authorization bill, it is my intention to request the Speaker for sequential referral of the legislation because it is a matter within the jurisdiction of the Committee on the Judiciary.

Sincerely,

PETER W. RODINO, JR.
 Chairman

PWR:sej

MAY 7 1985

AMENDMENT OFFERED BY MR. STUMP
TO THE INTELLIGENCE AUTHORIZATION ACT FOR FY 1986

(Citizenship for Certain Intelligence Sources)

Attachments: TAB A — Text of amendment offered by Mr. Stump
TAB B — Congressional Record excerpt explaining amendment

Summary

The amendment permits the President, in limited circumstances, to naturalize up to five foreign intelligence sources per fiscal year who have contributed substantially to the security of the United States.

Currently, under the CIA Act of 1949, the Director of Central Intelligence, the Attorney General and the Commission of Immigration, acting jointly, can admit foreign intelligence sources to permanent U.S. residence, notwithstanding the immigration laws. The amendment grants a special authority for citizenship similar to the special authority for permanent U.S. residence, although with stricter safeguards.

The amendment will enhance the ability of U.S. intelligence to attract well-motivated, highly-placed individuals abroad to secret intelligence service for the U.S. by permitting them, in certain circumstances, to become U.S. citizens expeditiously at the end of their service.

To offer the prospect of citizenship to attract the best sources, the U.S. needs an expeditious, secure and reliable statutory process to naturalize them at the end of their secret service. Neither the existing naturalization laws nor the congressional private bill procedure provides such an expeditious, secure and reliable process. The amendment does.

The amendment contains substantial safeguards to ensure careful use of the authority it confers:

- The Attorney General must determine that the source meets the good character requirement applicable to candidates for naturalization under the general naturalization law (see 8 U.S.C. 1427(a)(3)).
- The President personally must evaluate the source's intelligence service and find that it constitutes a substantial contribution to U.S. security.
- The President personally must exercise the naturalization authority.
- The President must notify the intelligence committees of Congress each time he uses the authority.
- The authority may not be used in any fiscal year to naturalize more than five persons.

Enactment of the amendment will improve the ability of U.S. intelligence to collect critically needed foreign intelligence and will properly reward with citizenship the nation's most highly valuable, deserving intelligence sources.

AMENDMENT OFFERED BY MR. STUMP
TO THE INTELLIGENCE AUTHORIZATION ACT FOR FY 1986
(Limited Special Naturalization Authority for Certain Intelligence Sources)

* * *

1 LIMITED SPECIAL NATURALIZATION AUTHORITY

2 SEC. ____ . Section 7 of the Central Intelligence Agency
3 Act of 1949, as amended (50 U.S.C. 403h) is amended by
4 inserting "(a)" after "SEC. 7." and adding at the end thereof
5 the following new subsection—

6 “(b)(1) The President may, notwithstanding any other
7 law, naturalize as a citizen of the United States an alien
8 admitted to the United States for permanent residence pursu-
9 ant to subsection (a) of this section if—

10 “(A) the Attorney General determines and certi-
11 fies to the President that the alien is a person of good
12 moral character, attached to the principles of the Con-
13 stitution of the United States and well disposed to the
14 good order and happiness of the United States, and

15 “(B) the President finds that the foreign intelli-
16 gence activities of the alien on behalf of the United
17 States have contributed substantially to the security of
18 the United States,

19 except that in no case shall the number of aliens naturalized
20 in any fiscal year pursuant to this subsection exceed five.

21 “(2) Prior to naturalization under paragraph (1) of this
22 subsection, an alien to be naturalized under such paragraph
23 shall, before an officer of the executive branch designated for

1 the purpose by the President, take the oath of renunciation of
2 former citizenship and acceptance of allegiance to the United
3 States required of an alien naturalized under other provisions
4 of law.

5 “(3) Notwithstanding any other law, a district court of
6 the United States, upon application of the Attorney General
7 under this subsection, shall, in a manner consistent with the
8 protection of intelligence sources, methods and activities,
9 issue or cause to be issued such documents relating to an
10 alien naturalized by the President under this subsection as
11 are issued relating to an alien naturalized under other provi-
12 sions of law, and such documents relating to an alien natural-
13 ized by the President shall have the same legal effect as doc-
14 uments issued relating to an alien naturalized under other
15 provisions of law.

16 “(4) The President may not delegate the authority
17 granted in paragraph (1) of this subsection, anything in sec-
18 tion 301 of title 3, United States Code, to the contrary not-
19 withstanding.

20 “(5) The President shall notify the Permanent Select
21 Committee on Intelligence of the House of Representatives
22 and the Select Committee on Intelligence of the Senate each
23 time the authority granted in paragraph (1) of this subsection
24 is exercised.”.

* * *

**H.R. 1082 WILL IMPROVE U.S.
HUMAN INTELLIGENCE CAPA-
BILITIES BY FACILITATING
CITIZENSHIP FOR CERTAIN
SOURCES**

HON. BOB STUMP

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 26, 1985

• Mr. STUMP. Mr. Speaker, the ability of the United States to collect intelligence on the intentions of hostile foreign countries depends upon the ability of the Central Intelligence Agency to persuade highly placed individuals in those countries to cooperate with U.S. intelligence. The motivation for such cooperation may vary from individual to individual. However, intelligence sources motivated by their belief in the principles of human freedom, justice, and peace, for which the United States stands in the world, have often proved to be of the greatest intelligence value. These individuals cooperate with U.S. intelligence because they wish to contribute to the advancement of high principles of freedom and often because they hope, at the end of their U.S. intelligence service abroad, to be welcomed into the community of freedom we enjoy in the United States. Title VII of H.R. 1082 will enhance the ability of U.S. intelligence to secure the cooperation of these well-motivated, highly placed individuals abroad by permitting them, in certain circumstances, to become U.S. citizens expeditiously at the end of their intelligence service.

**1. UNIQUE RELATIONSHIP OF INTELLIGENCE
SOURCES TO THE U.S. GOVERNMENT**

To carry out its foreign intelligence collection mission, the Central Intelligence Agency depends upon human sources abroad for information and operational assistance. To secure the cooperation of a well-placed individual who can provide the needed information or assistance, the CIA officer who will work with that source must establish with him a secret relationship with three critical elements: secrecy, trust, and mutual benefit.

Secrecy is the first critical element in the relationship between the CIA and a foreign intelligence source. A potential source will cooperate with the CIA only if he believes that the secrecy of his relationship with the CIA will be protected. If he believes that the CIA cannot provide an ironclad guarantee of secrecy and deliver on that guarantee, he will not cooperate. If such secrecy is breached, the source loses his freedom, and in many parts of the world, his life. The Congress has in recent years enhanced considerably the ability of the CIA to deliver on its guarantee of secrecy in human

intelligence activities by enacting the Intelligence Identities Protection Act, which protects the identities of intelligence sources, and the CIA Information Act, which excludes CIA operational files from the reach of the Freedom of Information Act.

Trust is the second critical element in the relationship between the CIA and an intelligence source. The intelligence source must be confident that the CIA as an institution of the U.S. Government, and the particular CIA officers with whom he works, will deal with him honestly and fairly, will take care of his interests in the event of mishap, and will honor fully whatever promises are made to him. The CIA takes great care to maintain such trust. Breaches of this trust would alienate foreign intelligence sources, ending their cooperation with U.S. intelligence.

Mutual benefit is the third critical element in the relationship between the CIA and the intelligence source. Neither U.S. intelligence nor an intelligence source will incur the risk which inheres in a clandestine intelligence relationship unless the product of the relationship is judged by both parties to be worth the risk. The U.S. Government benefits from the secret information and operational assistance the intelligence source provides. The intelligence source's benefits vary, sometimes including compensation and sometimes not. Among the most dedicated and effective intelligence sources, however, are those who only want a chance to contribute to the advancement of justice and freedom for which the United States stands and a chance to go to the United States at the end of their intelligence service, to participate in the free society which their secret service has helped to maintain.

**2. ADMISSION OF INTELLIGENCE SOURCES TO THE
UNITED STATES AT THE END OF THEIR SERVICE**

Under section 7 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403h), whenever the Director of Central Intelligence, the Attorney General and the Commissioner of Immigration determine that entry of an alien into the United States for permanent residence is in the interest of national security or essential to the furtherance of the national intelligence mission, the alien is admitted to the United States for permanent residence without regard to U.S. immigration laws. No more than 100 persons may be admitted under this special authority in any fiscal year. This special provision, enacted 36 years ago, provided

clear authority to bring U.S. foreign intelligence sources into the United States for permanent residence at the end of their intelligence service. Without such a clear statute that applies notwithstanding any other laws, the CIA would be unable to promise a potential intelligence source that at the end of his secret intelligence service the United States will reward him and protect him with permanent U.S. residence.

The ability of the CIA—with the approval of the Attorney General and the Commissioner of Immigration—to offer permanent residence in the United States at the end of service contributes substantially to the CIA's ability to persuade highly-placed individuals abroad to cooperate with U.S. intelligence. A statute which would permit U.S. intelligence to offer to a key potential intelligence source U.S. citizenship at the end of his service would contribute further to the CIA's ability to persuade key personnel of hostile foreign governments to cooperate with U.S. intelligence.

3. INABILITY TO OFFER CITIZENSHIP TO INTELLIGENCE SOURCES AT THE END OF THEIR SERVICE

Although section 7 of the CIA Act provides extraordinary authority to admit foreign intelligence sources to the United States for permanent residence, no similar statute exists which contains extraordinary authority with respect to citizenship for such persons. Thus, U.S. intelligence cannot offer citizenship to the best potential sources, because no statute exists which provides a clear guarantee that the United States can deliver on that offer after the source performs his secret intelligence service. Regardless of the value to the United States of a source's secret intelligence service, to become a citizen after he has become a permanent U.S. resident, he must qualify under the generally applicable naturalization laws. The requirement to comply with the general naturalization laws fails to take account of the critical contribution of certain intelligence sources to the national security and also fails to take account that, in certain cases, a former intelligence source may be handicapped in qualifying for citizenship solely because of his intelligence service.

Well-placed individuals of good character in hostile countries who risk their lives and livelihood for years to provide vital intelligence to the United States, because they believe in the principles for which America stands, have proved their fitness for citizenship by that service. Risking one's life

cause of its principles represents the highest demonstration of allegiance that nation. A foreign intelligence source whose actions contribute substantially to the security of the United States merits special consideration for citizenship.

The citizenship laws of our ally to the north, Canada, provide a clear example of a national determination that certain service of extraordinary value may merit an expedited method for conferring citizenship on the individual performing the service. Thus, section 5(4) of Canada's Citizenship Act (1976), other provisions of which contain detailed and restrictive provisions for becoming a citizen, provides:

In order . . . to reward services of an exceptional value to Canada, and notwithstanding any other provision of this Act, the Governor in Council may, in his discretion, direct the Minister to grant citizenship to any person and, where such a direction is made, the Minister shall forthwith grant citizenship to the person named in the direction.

The Canadian statute provides a useful model for special citizenship consideration based on extraordinarily valuable service to the Nation.

In the absence of a provision for special consideration for U.S. citizenship of America's best intelligence sources, they must continue to qualify for citizenship under the general naturalization laws. In some cases, however, the very activity the source undertook to assist U.S. intelligence may place the source at a disadvantage in qualifying for citizenship. Thus, for example, a source who—at the urging of U.S. intelligence—remained an active member of the Communist Party of a foreign nation to report to U.S. intelligence on the party's activities, suffers due to his cooperation with U.S. intelligence when he comes to the United States at the end of his service. The time spent in service to the United States as an intelligence source does not count in the source's favor in satisfying certain waiting periods imposed by the general naturalization laws. Having been a member of a Communist Party, he must wait 10 years before becoming eligible for citizenship, since the section 313 of the Immigration and Nationality Act (8 U.S.C. 1424) requires that 10 years have elapsed since an individual seeking citizenship has terminated membership in a Communist Party. Thus, under current U.S. law, foreign intelligence sources who have contributed substantially to U.S. security not only receive no special treatment in the citizenship process, but may even be actively handicapped in that process because of their service.

caps which the Immigration and Nationality Act imposes upon intelligence sources seeking citizenship, that act imposes procedural handicaps as well. Section 316(a) of the Immigration and Nationality Act (8 U.S.C. 1427) requires that an individual seeking citizenship file a petition for naturalization in the court with jurisdiction over his place of residence. This requirement would result in a publicly available court record revealing that the source is in the United States and revealing where he has settled in the United States. The availability of such information could constitute a threat to the safety of the source, whose former country may seek to do him harm.

In some situations, such as that of Soviet MIG pilot Viktor Belenko, the executive branch has secured the citizenship consideration a source deserves by seeking a private bill in the Congress. The private bill procedure, however, lacks sufficient security to serve as a permanent solution to the problem of citizenship for key sources. The private bill procedure reveals that a source is in the United States, since the private bill must include the source's name. Moreover, the private bill procedure requires rather general dissemination in the legislative branch of information, much of which will be classified, concerning the merits of the private bill. Most importantly, the outcome of the private bill procedure is not predictable; the press of other legislative business or the timing of the bill may result in its failure to pass for reasons wholly unrelated to the merits of the private bill. The hit-or-miss nature of the private bill procedure prevents U.S. intelligence from offering the prospect of citizenship to attract key foreign sources to service for the United States, because U.S. intelligence cannot offer citizenship unless it is absolutely sure it can deliver on its offer, and it cannot be sure with the private bill procedure.

Existing U.S. naturalization statutes do not take proper account of the special situation of the most valuable U.S. foreign intelligence sources. Legislation clearly establishing a speedy, secure, and reliable procedure for citizenship for such sources would correct this deficiency, enabling U.S. intelligence in appropriate circumstances to offer citizenship to key potential intelligence sources to attract them to service for the United States and to reward those sources who have contributed substantially to the security of the United States.

INTELLIGENCE SOURCE
IMPROVEMENT ACT

Title VII of H.R. 1082, entitled "Foreign Intelligence Source Improvement Act," provides the special, secure, and reliable procedure for citizenship for key sources that U.S. intelligence needs. Section 702 in title of the bill would permit the President personally, in certain circumstances, to naturalize intelligence sources committed to permanent U.S. residence under section 7 of the CIA Act of 1949. Section 702 provides:

SEC. 702. Section 7 of the Central Intelligence Agency Act of 1949, as amended (U.S.C. 403h) is amended by inserting "after 'Sec. 7,' and adding at the end thereof the following new subsection—

"(b)(1) The President may, notwithstanding any other law, naturalize as a citizen of the United States an alien admitted to the United States for permanent residence pursuant to subsection (a) of this section if—

"(A) the Attorney General determines and certifies to the President that the alien person of good moral character, attaches the principles of the Constitution of the United States and well disposed to the order and happiness of the United States and

"(B) the President finds that the foreign intelligence activities of the alien on behalf of the United States have contributed substantially to the security of the United States,

except that in no case shall the number of aliens naturalized in any fiscal year pursuant to this subsection exceed five.

"(2) Prior to naturalization under paragraph (1) of this subsection, an alien to be naturalized under such paragraph shall before an officer of the executive branch designated for the purpose by the President take the oath of renunciation of former citizenship and acceptance of allegiance to the United States required of an alien naturalized under other provisions of law.

"(3) Notwithstanding any other law, the district court of the United States, upon application of the Attorney General under this subsection, shall, in a manner consistent with the protection of intelligence sources, methods and activities, issue cause to be issued such documents relating to an alien naturalized by the President under this subsection as are issued relating to an alien naturalized under other provisions of law, and such documents relating to an alien naturalized by the President shall have the same legal effect as documents issued relating to an alien naturalized under other provisions of law.

"(4) The President may not delegate authority granted in paragraph (1) of this subsection, anything in section 301 of the United States Code, to the contrary notwithstanding.

"(5) The President shall notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate each time the authority granted in paragraph (1) of this subsection is exercised."

Section 702 of H.R. 1082 provides for naturalization of an intelligence source admitted to permanent U.S. residence under the CIA Act if, first, the Attorney General determines that the source is of good character and, second, the President finds that the source's foreign intelligence activities contributed substantially to the security of the United States. To ensure application of the provision in the manner intended, section 702 carefully circumscribes the unusual authority it confers to naturalize individuals whose intelligence activities have made an extraordinary contribution to U.S. security. Thus, the individual to be naturalized must, to the satisfaction of the Attorney General, meet the good character requirement applicable to candidates for naturalization under other laws (see 8 U.S.C. 1427(a)(3)); the President personally must evaluate the individual's intelligence activity and find that it constitutes a substantial contribution to U.S. security; the President personally must exercise the naturalization authority and may do so only with respect to not more than five individuals per fiscal year; and the President must notify the intelligence committees of the Congress each time he uses the authority.

Section 702 provides a clear and reliable statutory procedure for naturalization of individuals whose valuable secret intelligence service for the United States merits citizenship. The reliability of the procedure will enable U.S. intelligence to offer citizenship in appropriate circumstances to key potential intelligence sources. Enactment of section 702 will enhance the ability of the CIA to collect critically needed foreign intelligence and will properly reward with citizenship the Nation's most highly valuable, deserving intelligence sources.●

12/7-075 AUTH
BILL

MEMORANDUM FOR: Director of Central Intelligence

FROM: Charles A. Briggs
Director, Office of Legislative Liaison

SUBJECT: Letters to Representatives Hamilton and Stump
on Defector Citizenship: Recommendation for
DCI Signature

1. Attached for your signature are identical letters to Representatives Hamilton and Stump in their capacities as Chairman and Ranking Minority Member, respectively, of the House Permanent Select Committee on Intelligence (HPSCI). These letters retransmit to HPSCI the defector citizenship proposal, this time as freestanding legislation rather than as part of the Authorization Bill. They note that the Agency stands ready to testify before the Committee on the subject. They also indicate that the Agency favors the Administration proposal over the Stump version, although they make several positive statements about Mr. Stump's proposal and his support for this initiative in general. A brief background on the matter and the need for these letters is set forth below.

2. As you know, a defector citizenship proposal was included in the Administration's proposed Intelligence Authorization Bill for Fiscal Year 1986 which was sent to HPSCI and the Senate Select Committee on Intelligence (SSCI). That proposal, with some changes, has been included in the SSCI-reported version of the Bill. On the House side, Representative Stump included a separate defector citizenship provision in his omnibus bill, H.R. 1082, which was introduced some months ago. The Agency appreciated Mr. Stump's support on the issue, but preferred its version of this proposal to that contained in H.R. 1082.

3. After introduction of H.R. 1082, Representative Stump contacted Representative Mazzoli in the latter's capacity as Chairman of the Subcommittee on Immigration of the House Judiciary Committee. Mr. Stump asked Mr. Mazzoli for his concurrence in and support of the Stump defector citizenship provision. Mr. Mazzoli apparently gave his concurrence. When, however, Mr. Rodino, Chairman of the full Judiciary Committee learned of this, he wrote to Chairman Hamilton and indicated that he did not support the proposal and would seek referral to Judiciary of any version of the Intelligence Authorization Bill which contained such a proposal.

4. In this atmosphere, Mr. Stump's defector citizenship proposal became more and more of a partisan issue. As a result, HPSCI apparently rejected the inclusion of either the Administration or Stump version of the proposal in the Intelligence Authorization Bill. We understand, however, that as a concession to Mr. Stump, Mr. Hamilton has agreed to hold hearings on the subject. It is not clear at this point which legislative proposal will be the subject of the hearings.

5. The purpose of this letter is to keep the issue in front of HPSCI. Also, it is hoped that the letter will serve to focus HPSCI's attention on the Agency's proposal, thereby making that proposal the legislative item around which any hearings would revolve. It also is hoped that the letter will take the partisanship out of the issue by permitting Representative Stump to continue his general support for the issue but, at the same time, providing the Administration initiative for the Committee to consider in place of the Stump proposal. Finally, our ultimate hope is that if HPSCI gives favorable consideration to the item, it will, in conference with the SSCI on the Intelligence Authorization Bill, recede on the matter and allow the Senate provision to be placed in the conference version of the Bill.

6. We would like to send the letter as soon as possible since HPSCI has already reported out its "marked-up" version of the Authorization Bill.

Charles A. Briggs
Director, Office of Legislative Liaison

Attachment
as stated

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Central Intelligence Agency



Washington, D.C. 20505

OLL85-1441/1

The Honorable Lee Hamilton
Chairman
Permanent Select Committee on Intelligence
House of Representatives
Washington, D.C. 20515

Dear Lee:

I was disappointed to learn that the Permanent Select Committee on Intelligence did not include, during its recent markup of the Intelligence Authorization Bill for Fiscal Year 1986, any of the Administration's proposals contained in the draft bill transmitted to the Congress under my letter of 26 April 1985. I also was disappointed in the Committee's decision to include a covert arms transfer reporting provision in the bill, particularly at a time when the Agency and the Committee were actively negotiating reporting procedures on this very subject. At your staff's request, we will be providing the Committee with our formal views on this covert arms transfer proposal and the other provisions contained in H.R. 2419 as reported out by the Committee.

I believe that the proposals contained in the Administration Draft Bill are meritorious and I hope that the Committee will consider these initiatives for future appropriate legislative action. I would like to focus particular attention on the citizenship provision contained in Title VI of the Administration Draft. I believe that this is an important piece of legislation. If enacted, it would enhance our human collection capabilities as well as give recognition to those individuals who have already made a significant contribution to the national security. Because of the importance I attach to this matter, I am herewith submitting the item as separate legislation for the Committee's consideration: the "Foreign Source Intelligence Improvement Act of 1985", together with an accompanying analysis.

Should the Committee consider holding hearings on this subject, the Agency would welcome the opportunity to testify and to place this matter on the record. As you know, this proposal was included in last year's authorization bill and has been the subject of a number of discussions with Committee staff.

I want to thank Representative Stump for his introduction of legislation on this subject, H.R. 1082 (Title I), and for his leadership in bringing this matter to the attention of other Members. While the proposal I am submitting today is different in some respects from the Stump bill, it is nevertheless important to note that the Stump bill and the Administration proposal proceed from the same basis; i.e., the need to naturalize individuals who have made extraordinary contributions to the national security in a secure and expeditious fashion. I believe that this is something on which all of us can agree.

I hope that the Committee will give this matter favorable and timely consideration. This letter is also being provided to Representative Stump.

Sincerely,

William J. Casey
Director of Central Intelligence

Enclosure

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LEG/OLL (17 May 85)

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99th CONGRESS
1ST SESSION

H.R. _____

To improve the ability of the United States to obtain foreign
intelligence from human sources abroad.

IN THE HOUSE OF REPRESENTATIVES

_____, 1985

Mr. _____ introduced the following bill;
which was referred to _____

A BILL

To improve the ability of the United States to obtain foreign
intelligence from human sources abroad.

Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled, that this
Act may be cited as the "Foreign Intelligence Source
Improvement Act".

SEC. 2. Section 316 of the Immigration and Nationality Act (8 U.S.C. 1427) is amended by adding at the end thereof the following new subsection:

"(g)(1) Whenever the Director of Central Intelligence, the Attorney General, and the Commissioner of Immigration determine that a petitioner otherwise eligible for naturalization has made a significant contribution to the national security or to the national intelligence mission, the petitioner may be naturalized without regard to the residence and physical presence requirements of this section, or to the prohibitions of Section 313 of this Act, and no residence within the jurisdiction of the court shall be required.

(2) A petition under this provision may be filed without regard to the residence of the petitioner in any district court of the United States. The court shall conduct proceedings under this subsection in a manner consistent with the protection of intelligence sources, methods and activities."

WAIVER OF CERTAIN NATURALIZATION REQUIREMENTS

The above provision amends section 316 of the Immigration and Nationality Act (8 U.S.C. 1427) to improve the ability of the United States to obtain foreign intelligence from sources abroad by authorizing the waiver of three requirements for naturalization for certain persons who have made significant contributions to the national security or to the national intelligence mission. The requirements are general residency and physical presence, the requirements imposed on members of certain organizations, and the requirement that the naturalization petition be filed in the court which has jurisdiction over the petitioner's place of residence.

Congress has established a number of conditions on the granting of United States citizenship. These are set forth in Chapter 2 of Title III of the Immigration and Nationality Act, 8 U.S.C. 1421 et seq. The Congress has recognized, however, that when necessary to other governmental interests, certain of these requirements should be reduced or waived entirely. Unfortunately, there remain some requirements of the Immigration and Nationality Act which prevent complete recognition of significant contributions to the national security or to the national intelligence mission, and limit the ability of the United States to recruit potential foreign intelligence sources. The proposed amendment seeks to remedy this situation by addressing three requirements which currently stand in the way of expeditious naturalization of individuals making such contributions. Under the proposed amendment, waivers would be authorized in recognition of outstanding contributions to the United States and of the fact that the character and quality of service to the United States by certain individuals demonstrates that there is no need for them to serve a probationary period of residence to prove their fitness for citizenship.

The waivers authorized by proposed subsection (b) are limited in nature. They would become operative only after the requisite finding by the Director of Central Intelligence (DCI), the Attorney General (AG), and the Commissioner of the Immigration and Naturalization Service (INS). Waivers would be authorized only for three very specific requirements for naturalization. Individuals granted such waivers would have to comply with all other naturalization requirements.

Residence and Physical Presence

Section 316 of the Immigration and Nationality Act sets forth the residency and physical presence requirements which must be met by a petitioner. The establishment of these residency requirements reflects a determination by the Congress that such probationary periods are necessary in order for a petitioner to demonstrate his fitness for citizenship. Nevertheless, the Congress has also determined that for certain classes of petitioners these requirements are neither necessary nor appropriate. Thus, the Congress had determined that in certain cases the service which an individual has rendered to the United States demonstrates his fitness to become a citizen and merits expedited consideration. Among the classes of persons afforded such special treatment under the Immigration and Nationality Act in recognition of their service to the United States are: Individuals employed overseas by the United States Government, an American corporation engaged in the development of foreign trade or commerce, or, an American institution of research (§316(b)); employees of the United States Government employed abroad (§316(c)); merchant seamen on United States flag ships (§330), and; persons who have served in the Armed Forces of the United States (§328 and 329).

It also is clear that one of the classes of persons which the Congress has determined merits special consideration under the immigration and naturalization laws for their service to the United States are persons who have contributed to the national security. This determination is embodied in section 7 of the Central Intelligence Agency Act of 1949, 50 U.S.C. 403h. Section 7 permits the admission of a limited number of persons to permanent resident alien status notwithstanding their inadmissibility under the immigration laws if the DCI, AG, and the Commissioner of INS determine that such admission would be "in the interest of national security or essential to the furtherance of the national intelligence mission."

The Congress also has recognized that there must be some flexibility concerning naturalization of such persons. Accordingly, in subsection (c) of section 316 of the Immigration and Nationality Act, the Congress has seen fit to relax certain residency requirements for the naturalization of persons who are employed by or contractors of the Central Intelligence Agency. In the case of Victor Ivanovich Belenko, the Soviet Air Force pilot who defected to the West, the Congress saw fit to waive the residency requirements for naturalization as well as the impediments to naturalization imposed by Mr. Belenko's prior membership in the Communist Party and the requirement as to the place of filing his petition. (Private Law 96-28; see Senate Report 96-903).

Given the importance of expedited naturalization for individuals, not citizens of the United States, who are in a position to make significant contributions to the national intelligence mission, this provision will provide the United States with an ability to offer such an inducement to potential foreign intelligence sources abroad. In virtually all these cases at present, such expeditious action is foreclosed by the requirements of Section 316.

The delay which these individuals must face in complying with existing law is often a serious blow to their aspirations of becoming full fledged members of the American community. Current law eliminates an opportunity to stimulate future contributions to our national security by those who might be encouraged to cooperate with us on account of the availability of a smooth and swift transition to United States citizenship.

It is possible to overcome these problems through the enactment of private bills, as in the Belenko case. Obtaining a private bill, however, entails explaining the individual's contribution and why it merits expeditious naturalization. This is often impossible, because in many cases even the slightest publicity would jeopardize the individual's security and could diminish the value of his contribution to the intelligence mission. This is particularly true when the United States is taking affirmative measures to conceal an individual's identity or the nature of his contribution to the intelligence mission.

Proposed subsection (g)(1) establishes a systematic method of recognizing the importance of services rendered to the United States by certain individuals by permitting the Director of Central Intelligence, the Attorney General and the Commissioner to waive the residency and physical presence requirements of section 316 in appropriate cases. This waiver will recognize the contributions of these individuals by allowing them to petition immediately for naturalization without having to endure an unnecessary probationary period. The individuals who would benefit from the proposed waiver authority would already have demonstrated their fitness to become citizens and their commitment to the United States.

Proposed subsection (g)(1) is consistent with the existing structure of the naturalization laws, which already permit the waiver of these requirements for other classes of individuals who have rendered special service to the United States. Further, it builds upon the Congressional recognition, embodied in Section 7 of the Central Intelligence Agency Act of 1949, subsection (c) of Section 316, and the Belenko legislation,

that the requirements of the immigration and nationality laws should be flexible in application to persons who make a substantial contribution to the national intelligence mission.

Membership in Prohibited Organizations

Section 313 of the Immigration and Nationality Act, 8 U.S.C. 1424, prohibits the naturalization of individuals who are members of certain prohibited organizations or who espouse certain political ideologies. Its principal thrust is directed against persons who are members of the Communist Party in any of its various manifestations worldwide, in effect barring them from naturalization.

Subsection 313(c), however, provides an exception to this general exclusion. It permits petitioners who otherwise would be barred by Section 313 to petition for naturalization provided that, at the time of petitioning, more than ten years have elapsed since termination of their membership in the prohibited organization. This is, in effect, a ten year probationary period for former members of the Communist Party, during which they must demonstrate that they have shed their attachment to the Party, its principles and goals, and are otherwise fit for citizenship.

Section 313 imposes some special difficulties vis-a-vis the national intelligence mission in that some of the most important contributions to that mission are made by individuals who were members of the Communist Party. Indeed, their ability to contribute to this mission is normally enhanced by their Communist Party membership. Proposed subsection (g)(1) would permit waiver of this ten year bar for persons who have made significant contributions to the national intelligence mission.

As with the residency requirements of Section 316, the probationary period established by Section 313(c) is not needed in the case of these individuals. By their service to the national intelligence mission, they have demonstrated, usually at the risk of their lives, that they have effectively foresworn Communism and are fit candidates for United States citizenship. They need no probationary period to prove that fitness.

Residence Within the Jurisdiction

Section 316(a) of the Immigration and Nationality Act, 8 U.S.C. 1427(a), taken together with other sections of that Act, requires a petitioner to file his petition for naturalization in the court which has jurisdiction over his

place of residence. In effect, this means that the petitioner must file in the State in which he spends the last six months of required State residency.

A waiver of the physical presence and residency requirements of Section 316 also necessitates a waiver of this procedural requirement. Petitioners benefiting from a waiver of the physical presence and residency requirements most likely will not have a permanent place of residence at the time of filing their petitions; hence, there will be no court with jurisdiction over the place of residence. Section 328 of the Immigration and Nationality Act is illustrative in this regard. In Section 328 the Congress has seen fit to waive the physical presence and residency requirements on the basis of service in the armed forces, and the requirement for residence within the jurisdiction is waived as well.

A waiver of the Section 316(a) requirement for individuals who have made significant contributions to the national intelligence mission also follows from the circumstances of individuals involved. Not only might they lack established residences, but it may be advisable for the United States, for reasons of security, to have the petition filed at a particular location.

Proceedings under this Subsection

Subsection (g)(2), together with the last sentence of subsection (g)(1), make it clear that a naturalization petition which arises under this section may be filed in any district court. Subsection (g)(2) also mandates that the naturalization proceeding be conducted so as to insure the protection of intelligence sources and methods from unauthorized disclosure.

As noted above, the petitioner in such cases often has not had the opportunity to establish residency in a particular location in the United States. In addition, security concerns and the interests of the government may require that the individual reside in a particular place or not reside in other places. Accordingly, subsection (g)(2) provides that a naturalization petition in such cases can be filed in any district court in the United States, and that such petitions are to be accepted for adjudication by the court in which they are filed.

Information involved in such naturalization proceedings will, by definition, be quite sensitive and revealing of the national intelligence mission. All information necessary to the adjudication of the petition, must, of course, be presented

to the court. Yet, at the same time, information concerning intelligence sources and methods must be protected from unauthorized disclosure. No particular procedure is required. It instead is left to the discretion of the court and the government to insure that appropriate procedures, e.g., sealing of the record, are utilized.

Conclusion

In sum, the proposed amendment is needed to enhance the ability of the United States to collect information from and recruit foreign intelligence sources and is warranted as a recognition of the significant contributions made by certain individuals to the national intelligence mission. It is narrowly drawn, building upon previous legislative enactments in the area of intersection between the national intelligence mission and the immigration and nationality laws.